

APPEAL NO. 170148
FILED MARCH 7, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) has not reached maximum medical improvement (MMI), so no impairment rating (IR) may be assigned at this time; (2) the claimant had disability beginning on October 22, 2015, and continuing through May 25, 2016; and (3) the claimant did not have disability from May 26, 2016, through the date of the CCH. We note that the decision contains an incorrect address for the carrier's registered agent for service of process.

The claimant appealed that portion of the disability determination that was adverse to her, contending that the decision contains either a clerical error or an oversight on the hearing officer's part. The respondent (carrier) responded, noting inconsistencies in the hearing officer's decision regarding disability.

The hearing officer's determination that the claimant has not reached MMI so no IR may be assigned at this time was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of mild tearing of both peroneal tendons, left ankle tears, and left ankle sprain/strain. The claimant testified she was injured when she walked off a slab of cement onto the ground and twisted her left ankle.

The disability issue before the hearing officer as agreed to by the parties at the CCH was "[d]oes the claimant have disability resulting from the compensable injury from October 28, 2015, to the present?"

The hearing officer stated in the Discussion portion of the decision that the preponderance of the evidence does support that the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage beginning on October 28, 2015, through the date of the CCH. However, the hearing officer found in Finding of Fact No. 5 that the compensable injury was a

cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage beginning on October 22, 2015, and continuing through May 25, 2016, but the claimant did not have disability from May 26, 2016, through the date of the CCH. The hearing officer also stated in the Decision and Order on the first page of the decision, Conclusion of Law No. 5, and the Decision that the claimant had disability beginning on October 22, 2015, and continuing through May 25, 2016, but the claimant did not have disability from May 26, 2016, through the date of the CCH.

The hearing officer's disability determination exceeded the scope of the disability issue before him to decide. Accordingly, we strike that portion of the hearing officer's determination that the claimant had disability from October 22, 2015, through October 27, 2015. Furthermore, the hearing officer's Discussion regarding the dates of disability is inconsistent with his Finding of Fact, Conclusion of Law, and Decision on the disability issue. Therefore, we reverse that portion of the hearing officer's determinations that the claimant had disability beginning on October 28, 2015, and continuing through May 25, 2016, but did not have disability from May 26, 2016, through the date of the CCH, and we remand the issue of whether the claimant had disability from October 28, 2015, through the date of the CCH to the hearing officer for further action consistent with this decision.

SUMMARY

We strike that portion of the hearing officer's determination that the claimant had disability from October 22 through October 27, 2015, as exceeding the scope of the disability issue before the hearing officer.

We reverse the hearing officer's determinations that the claimant had disability beginning on October 28, 2015, and continuing through May 25, 2016, but did not have disability from May 26, 2016, through the date of the CCH, and we remand the issue of whether the claimant had disability from October 28, 2015, through the date of the CCH to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to determine whether the claimant had disability beginning on October 28, 2015, through the date of the CCH based on the evidence presented. No new evidence is to be admitted. The hearing officer is also to correct the address for the carrier's registered agent for service of process in the decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY d/b/a CSC-LAWYERS INCORPORATING
SERVICE COMPANY**

**211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge